

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 4, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3027

**Introduced by Committee on Judiciary (Corbett (Chair), Dutra,
Jackson, Longville, Shelley, Steinberg, and Wayne)**

March 12, 2002

An act to amend Sections ~~1812.20~~ *1812.10* and 2984.4 of the Civil Code, to amend Sections 116.340, 116.370, 116.570, 116.940, 392, 395, 396, 396a, *437c*, 575.2, 631, 1005, and 2094 of, to repeal Section 402.5 of, and to repeal and add Section 402 of, the Code of Civil Procedure, to amend Sections 1030, 1031, 1032, 1033, and 1034 of, and to amend the heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of, the Evidence Code, and to amend Section 818.9 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 3027, as amended, Committee on Judiciary. Courts.

(1) Existing law provides that a public entity, its employees, and volunteers are not liable under the Governmental Tort Liability Act for advice provided to small claims litigants.

This bill would provide that independent contractors, as well as employees and volunteers, who provide advice to small claims litigants or potential litigants as a public service on behalf of a court or county are not liable for that advice under that act.

(2) Existing law specifies the deadlines for service of a claim and order on a defendant in small claims court.

This bill would extend those deadlines, as specified, set a deadline for the postponement of a small claims court hearing, and require a request for postponement to be for good cause.

(3) Existing law provides for the unification of municipal and superior courts.

This bill would delete obsolete provisions regarding the transfer of cases between a municipal and superior court.

(4) Existing law authorizes a superior court in a county in which there is no municipal court to transfer a limited civil case to another branch or location of the superior court in the county.

This bill would repeal this provision and enact new provisions regarding the proper location of the superior court in a county in which a particular matter shall be heard. The bill would authorize a superior court, by local rules, to designate the nearest or most accessible location for the trial of specified cases, and to provide for the transfer of cases to the proper location in the county. The bill would also make related changes.

(5) Existing law authorizes a trial court, on the motion of a party or its own motion, to strike a pleading, dismiss an action, enter a default judgment, or impose lesser penalties, as well as to require the opposing party or his or her counsel to pay the reasonable expenses of the moving party.

This bill would prohibit the imposition of any penalty under this provision without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.

(6) Existing law provides for the advance deposit of jury fees and mileage or transportation allowance, and the ways in which a jury trial may be waived for failure to provide these advance deposits, in a civil action. Existing law also provides the ways in which an opposing party may reinstate the jury trial following waiver by the party who originally requested a jury trial.

This bill would revise the provisions for the advance deposit of jury fees and mileage or transportation allowance, and the ways in which a jury trial may be waived for failure to provide these advance deposits, in a civil action. The bill would also delete the provisions for an opposing party to reinstate a jury trial following waiver by the party who originally requested a jury trial.



(7) Existing law prescribes the form of an oath, affirmation, or declaration in an action or proceeding.

This bill would make a technical, nonsubstantive change in that provision.

(8) Existing law specifies the methods for service of papers opposing a motion and all reply papers.

This bill would extend these provisions to apply to opposition and reply papers regarding motions for summary judgment or summary adjudication, *and would make conforming changes*.

(9) Existing law establishes the evidentiary privilege between the clergy and their penitents.

This bill would make technical, nonsubstantive changes in those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1812.10 of the Civil Code is amended
2 to read:

3 1812.10. (a) An action on a contract or installment account
4 under this chapter shall be tried in the superior court in the county
5 where the contract was in fact signed by the buyer, where the buyer
6 resided at the time the contract was entered into, where the buyer
7 resides at the commencement of the action, or where the goods
8 purchased pursuant to the contract have been so affixed to real
9 property as to become a part of that real property.

10 (b) In the superior court designated as the proper court in
11 subdivision (a), the proper court location for trial of an action
12 under this chapter is the location where the court tries that type of
13 action that is nearest or most accessible to where the contract was
14 in fact signed by the buyer, where the buyer resided at the time the
15 contract was entered into, where the buyer resides at the
16 commencement of the action, or where the goods purchased
17 pursuant to the contract have been so affixed to real property as to
18 become a part of that real property. Otherwise, any location of the
19 superior court designated as the proper court in subdivision (a) is
20 the proper court location for the trial of the action. The court may
21 specify by local rule the nearest or most accessible court location
22 where the court tries that type of case.

(c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a superior court and court location described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice. The court may, on terms that are just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 2. Section 2984.4 of the Civil Code is amended to read:

2984.4. (a) An action on a contract or purchase order under this chapter shall be tried in the superior court in the county where the contract or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in those courts if there is at least one claim or cause of action arising from a contract subject to this chapter.

(b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract, conditional sale contract, or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract is permanently garaged. Otherwise, any location of the superior court designated as the proper superior court in subdivision (a) is the proper court location for the trial of the action. The court may

1 specify by local rule the nearest or most accessible court location
2 where the court tries that type of case.

3 (c) In any action subject to this section, concurrently with the
4 filing of the complaint, the plaintiff shall file an affidavit stating
5 facts showing that the action has been commenced in a superior
6 court and court location described in this section as a proper place
7 for the trial of the action. Those facts may be stated in a verified
8 complaint and shall not be stated on information or belief. When
9 that affidavit is filed with the complaint, a copy shall be served
10 with the summons. If a plaintiff fails to file the affidavit or state
11 facts in a verified complaint required by this section, no further
12 proceedings may occur, but the court shall, upon its own motion
13 or upon motion of any party, dismiss the action without prejudice.
14 The court may, on terms that are just, permit the affidavit to be filed
15 subsequent to the filing of the complaint and a copy of the affidavit
16 shall be served on the defendant. The time to answer or otherwise
17 plead shall date from that service.

18 SEC. 3. Section 116.340 of the Code of Civil Procedure is
19 amended to read:

20 116.340. (a) Service of the claim and order on the defendant
21 may be made by any one of the following methods:

22 (1) The clerk may cause a copy of the claim and order to be
23 mailed to the defendant by any form of mail providing for a return
24 receipt.

25 (2) The plaintiff may cause a copy of the claim and order to be
26 delivered to the defendant in person.

27 (3) The plaintiff may cause service of a copy of the claim and
28 order to be made by substituted service as provided in subdivision
29 (a) or (b) of Section 415.20 without the need to attempt personal
30 service on the defendant. For these purposes, substituted service
31 as provided in subdivision (b) of Section 415.20 may be made at
32 the office of the sheriff or marshal who shall deliver a copy of the
33 claim and order to any person authorized by the defendant to
34 receive service, as provided in Section 416.90, who is at least 18
35 years of age, and thereafter mailing a copy of the claim and order
36 to the defendant's usual mailing address.

37 (4) The clerk may cause a copy of the claim to be mailed, the
38 order to be issued, and a copy of the order to be mailed as provided
39 in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 15 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(d) Service shall be made within this state, except as provided in subdivisions (e) and (f).

(e) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(f) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(g) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.

SEC. 4. Section 116.370 of the Code of Civil Procedure is amended to read:

116.370. (a) Venue and court location requirements in small claims actions shall be the same as in other civil actions. The court may prescribe by local rule the proper court locations for small claims actions.

(b) A defendant may challenge venue or court location by writing to the court and mailing a copy of the challenge to each of

1 the other parties to the action, without personally appearing at the
2 hearing.

3 (c) In all cases, including those in which the defendant does not
4 either challenge venue or court location or appear at the hearing,
5 the court shall inquire into the facts sufficiently to determine
6 whether venue and court location are proper, and shall make its
7 determination accordingly.

8 (1) If the court determines that the action was not commenced
9 in the proper venue, the court, on its own motion, shall dismiss the
10 action without prejudice, unless all defendants are present and
11 agree that the action may be heard. If the court determines that the
12 action was not commenced in the proper court location, the court
13 may transfer the action to a proper location pursuant to local rule.

14 (2) If the court determines that the action was commenced in
15 the proper venue and court location, the court may hear the case
16 if all parties are present. If the defendant challenged venue or court
17 location and all parties are not present, the court shall postpone the
18 hearing for at least 15 days and shall notify all parties by mail of
19 the court's decision and the new hearing date, time, and place.

20 SEC. 5. Section 116.570 of the Code of Civil Procedure is
21 amended to read:

22 116.570. (a) Any party may submit a written request to
23 postpone a hearing date for good cause.

24 (1) The written request may be made either by letter or on a
25 form adopted or approved by the Judicial Council.

26 (2) The request shall be filed at least 10 days before the hearing
27 date, unless the court determines that the requesting party has good
28 cause to file the request at a later date.

29 (3) On the date of making the written request, the requesting
30 party shall mail or personally deliver a copy to each of the other
31 parties to the action.

32 (4) (A) If the court finds that the interests of justice would be
33 served by postponing the hearing, the court shall postpone the
34 hearing, and shall notify all parties by mail of the new hearing date,
35 time, and place.

36 (B) On one occasion, upon the written request of a defendant
37 guarantor, the court shall postpone the hearing for at least 30 days,
38 and the court shall take this action without a hearing. This
39 subparagraph does not limit the discretion of the court to grant
40 additional postponements under subparagraph (A).

1 (5) The court shall provide a prompt response by mail to any
2 person making a written request for postponement of a hearing
3 date under this subdivision.

4 (b) If service of the claim and order upon the defendant is not
5 completed within the number of days before the hearing date
6 required by subdivision (b) of Section 116.340, and the defendant
7 has not personally appeared and has not requested a postponement,
8 the court shall postpone the hearing for at least 15 days. If a
9 postponement is ordered under this subdivision, the clerk shall
10 promptly notify all parties by mail of the new hearing date, time,
11 and place.

12 (c) This section does not limit the inherent power of the court
13 to order postponements of hearings in appropriate circumstances.

14 (d) A fee of ten dollars (\$10) shall be charged and collected for
15 the filing of a request for postponement and rescheduling of a
16 hearing date after timely service pursuant to subdivision (b) of
17 Section 116.340 has been made upon the defendant.

18 SEC. 6. Section 116.940 of the Code of Civil Procedure is
19 amended to read:

20 116.940. (a) Except as otherwise provided in this section or
21 in rules adopted by the Judicial Council, the characteristics of the
22 small claims advisory service required by Section 116.260 shall be
23 determined by each county in accordance with local needs and
24 conditions.

25 (b) Each advisory service shall provide the following services:

26 (1) Individual personal advisory services, in person or by
27 telephone, and by any other means reasonably calculated to
28 provide timely and appropriate assistance.

29 (2) Recorded telephone messages may be used to supplement
30 the individual personal advisory services, but shall not be the sole
31 means of providing advice available in the county.

32 (3) Adjacent counties may provide advisory services jointly.

33 (c) In any county in which the number of small claims actions
34 filed annually is 1,000 or less as averaged over the immediately
35 preceding two fiscal years, the county may elect to exempt itself
36 from the requirements set forth in subdivision (b). This exemption
37 shall be formally noticed through the adoption of a resolution by
38 the board of supervisors. If a county so exempts itself, the county
39 shall nevertheless provide the following minimum advisory
40 services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors may not appear in court as an advocate for any party.

(f) Advisors, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

SEC. 7. Section 392 of the Code of Civil Procedure is amended to read:

392. (a) Subject to the power of the court to transfer actions and proceedings as provided in this title, the superior court in the county where the real property that is the subject of the action, or some part thereof, is situated, is the proper court for the trial of the following actions:

(1) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of that right or interest, and for injuries to real property.

(2) For the foreclosure of all liens and mortgages on real property.

(b) In the court designated as the proper court in subdivision (a), the proper court location for trial of a proceeding for an unlawful detainer, as defined in Section 1161, is the location where the court tries that type of proceeding that is nearest or most

1 accessible to where the real property that is the subject of the
2 action, or some part thereof, is situated. Otherwise any location of
3 the superior court designated as the proper court in subdivision (a)
4 is a proper court location for the trial. The court may specify by
5 local rule the nearest or most accessible court location where the
6 court tries that type of case.

7 SEC. 8. Section 395 of the Code of Civil Procedure is
8 amended to read:

9 395. (a) Except as otherwise provided by law and subject to
10 the power of the court to transfer actions or proceedings as
11 provided in this title, the superior court in the county where the
12 defendants or some of them reside at the commencement of the
13 action is the proper court for the trial of the action. If the action is
14 for injury to person or personal property or for death from
15 wrongful act or negligence, the superior court in either the county
16 where the injury occurs or the injury causing death occurs or the
17 county where the defendants, or some of them reside at the
18 commencement of the action, is a proper court for the trial of the
19 action. In a proceeding for dissolution of marriage, the superior
20 court in the county where either the petitioner or respondent has
21 been a resident for three months next preceding the
22 commencement of the proceeding is the proper court for the trial
23 of the proceeding. In a proceeding for nullity of marriage or legal
24 separation of the parties, the superior court in the county where
25 either the petitioner or the respondent resides at the
26 commencement of the proceeding is the proper court for the trial
27 of the proceeding. In a proceeding to enforce an obligation of
28 support under Section 3900 of the Family Code, the superior court
29 in the county where the child resides is the proper court for the trial
30 of the action. In a proceeding to establish and enforce a foreign
31 judgment or court order for the support of a minor child, the
32 superior court in the county where the child resides is the proper
33 court for the trial of the action. Subject to subdivision (b), if a
34 defendant has contracted to perform an obligation in a particular
35 county, the superior court in the county where the obligation is to
36 be performed, where the contract in fact was entered into, or where
37 the defendant or any defendant resides at the commencement of
38 the action is a proper court for the trial of an action founded on that
39 obligation, and the county where the obligation is incurred is the
40 county where it is to be performed, unless there is a special contract

1 in writing to the contrary. If none of the defendants reside in the
2 state or if they reside in the state and the county where they reside
3 is unknown to the plaintiff, the action may be tried in the superior
4 court in any county that the plaintiff may designate in his or her
5 complaint, and, if the defendant is about to depart from the state,
6 the action may be tried in the superior court in any county where
7 either of the parties reside or service is made. If any person is
8 improperly joined as a defendant or has been made a defendant
9 solely for the purpose of having the action tried in the superior
10 court in the county where he or she resides, his or her residence
11 shall not be considered in determining the proper place for the trial
12 of the action.

13 (b) Subject to the power of the court to transfer actions or
14 proceedings as provided in this title, in an action arising from an
15 offer or provision of goods, services, loans or extensions of credit
16 intended primarily for personal, family or household use, other
17 than an obligation described in Section 1812.10 or Section 2984.4
18 of the Civil Code, or an action arising from a transaction
19 consummated as a proximate result of either an unsolicited
20 telephone call made by a seller engaged in the business of
21 consummating transactions of that kind or a telephone call or
22 electronic transmission made by the buyer or lessee in response to
23 a solicitation by the seller, the superior court in the county where
24 the buyer or lessee in fact signed the contract, where the buyer or
25 lessee resided at the time the contract was entered into, or where
26 the buyer or lessee resides at the commencement of the action is
27 the proper court for the trial of the action. In the superior court
28 designated in this subdivision as the proper court, the proper court
29 location for trial of a case is the location where the court tries that
30 type of case that is nearest or most accessible to where the buyer
31 or lessee resides, where the buyer or lessee in fact signed the
32 contract, where the buyer or lessee resided at the time the contract
33 was entered into, or where the buyer or lessee resides at the
34 commencement of the action. Otherwise, any location of the
35 superior court designated as the proper court in this subdivision is
36 a proper court location for the trial. The court may specify by local
37 rule the nearest or most accessible court location where the court
38 tries that type of case.

39 (c) Any provision of an obligation described in subdivision (b)
40 waiving that subdivision is void and unenforceable.

1 SEC. 9. Section 396 of the Code of Civil Procedure is
2 amended to read:

3 396. (a) If an action or proceeding is commenced in a court
4 that lacks jurisdiction of the subject matter thereof, as determined
5 by the complaint or petition, if there is a court of this state that has
6 subject matter jurisdiction, the action or proceeding shall not be
7 dismissed (except as provided in Section 399, and paragraph (1)
8 of subdivision (b) of Section 581) but shall, on the application of
9 either party, or on the court's own motion, be transferred to a court
10 having jurisdiction of the subject matter that may be agreed upon
11 by the parties, or, if they do not agree, to a court having subject
12 matter jurisdiction that is designated by law as a proper court for
13 the trial or determination thereof, and it shall thereupon be entered
14 and prosecuted in the court to which it is transferred as if it had
15 been commenced therein, all prior proceedings being saved. In
16 that case, if summons is served prior to the filing of the action or
17 proceeding in the court to which it is transferred, as to any
18 defendant, so served, who has not appeared in the action or
19 proceeding, the time to answer or otherwise plead shall date from
20 service upon that defendant of written notice of filing of the action
21 or proceeding in the court to which it is transferred.

22 (b) If an action or proceeding is commenced in or transferred
23 to a court that has jurisdiction of the subject matter thereof as
24 determined by the complaint or petition, and it thereafter appears
25 from the verified pleadings, or at the trial, or hearing, that the
26 determination of the action or proceeding, or of a cross-complaint,
27 will necessarily involve the determination of questions not within
28 the jurisdiction of the court, in which the action or proceeding is
29 pending, the court, whenever that lack of jurisdiction appears,
30 must suspend all further proceedings therein and transfer the
31 action or proceeding and certify the pleadings (or if the pleadings
32 be oral, a transcript of the same), and all papers and proceedings
33 therein to a court having jurisdiction thereof that may be agreed
34 upon by the parties, or, if they do not agree, to a court having
35 subject matter jurisdiction that is designated by law as a proper
36 court for the trial or determination thereof.

37 (c) An action or proceeding that is transferred under the
38 provisions of this section shall be deemed to have been
39 commenced at the time the complaint or petition was filed in the
40 court from which it was originally transferred.



1 (d) This section may not be construed to preclude or affect the
2 right to amend the pleadings as provided in this code.

3 (e) Upon the making of an order for transfer, proceedings shall
4 be had as provided in Section 399, the costs and fees thereof, and
5 of filing the case in the court to which transferred, to be paid by the
6 party filing the pleading in which the question outside the
7 jurisdiction of the court appears unless the court ordering the
8 transfer shall otherwise direct.

9 SEC. 10. Section 396a of the Code of Civil Procedure is
10 amended to read:

11 396a. In a case that is subject to Sections 1812.10 and 2984.4
12 of the Civil Code, or subdivision (b) of Section 395 of the Code
13 of Civil Procedure, or in an action or proceeding for an unlawful
14 detainer as defined in Section 1161 of the Code of Civil Procedure:

15 (a) The plaintiff shall state facts in the complaint, verified by
16 the plaintiff's oath, or the oath of the plaintiff's attorney, or in an
17 affidavit of the plaintiff or of the plaintiff's attorney filed with the
18 complaint, showing that the action has been commenced in the
19 proper superior court and the proper court location for the trial of
20 the action or proceeding, and showing that the action is subject to
21 the provisions of Sections 1812.10 and 2984.4 of the Civil Code
22 or subdivision (b) of Section 395 of the Code of Civil Procedure,
23 or is an action for an unlawful detainer. When the affidavit is filed
24 with the complaint, a copy thereof shall be served with the
25 summons. Except as provided in this section, if the complaint or
26 affidavit is not filed pursuant to this subdivision, no further
27 proceedings may occur in the action or proceeding, except to
28 dismiss the action or proceeding without prejudice. However, the
29 court may, on terms that are just, permit the affidavit to be filed
30 after the filing of the complaint, and a copy of the affidavit shall
31 be served on the defendant and the time to answer or otherwise
32 plead shall date from that service.

33 (b) If it appears from the complaint or affidavit, or otherwise,
34 that the superior court or court location where the action or
35 proceeding is commenced is not the proper court or court location
36 for the trial, the court where the action or proceeding is
37 commenced, or a judge thereof, shall, whenever that fact appears,
38 transfer it to the proper court or court location, on its own motion,
39 or on motion of the defendant, unless the defendant consents in
40 writing, or in open court (consent in open court being entered in

1 the minutes or docket of the court), to the keeping of the action or
2 proceeding in the court or court location where commenced. If that
3 consent is given, the action or proceeding may continue in the
4 court or court location where commenced. Notwithstanding the
5 provisions of Section 1801.1 and subdivision (f) of Section 2983.7
6 of the Civil Code, that consent may be given by a defendant who
7 is represented by counsel at the time the consent is given, and if an
8 action or proceeding is subject to subdivision (b) of Section 395
9 or is for an unlawful detainer, that consent may only be given by
10 a defendant who is represented by counsel at the time the consent
11 is given.

12 (c) In any case where the transfer of the action or proceeding
13 is ordered under the provisions of subdivision (a) or (b), if
14 summons is served prior to the filing of the action or proceeding
15 in the superior court or court location to which it is transferred, as
16 to any defendant, so served, who has not appeared in the action or
17 proceeding, the time to answer or otherwise plead shall date from
18 service upon that defendant of written notice of the filing.

19 (d) If it appears from the complaint or affidavit of the plaintiff
20 that the superior court and court location where the action or
21 proceeding is commenced are a proper court and court location for
22 the trial thereof, all proper proceedings may be had, and the action
23 or proceeding may be tried in that court at that location.

24 (e) A motion for a transfer of the action or proceeding to a
25 different superior court may be made as in other cases, within the
26 time, upon the grounds, and in the manner provided in this title,
27 and if upon that motion it appears that the action or proceeding is
28 not pending in the proper court, or should for other cause be
29 transferred, the action or proceeding shall be ordered transferred
30 as provided in this title.

31 If any action or proceeding is ordered transferred to another
32 court as provided in this section, proceedings shall be had, and the
33 costs and fees shall be paid, as provided in Sections 398 and 399.

34 (f) If a motion is made for transfer of an action or proceeding
35 to a different court location within the same superior court as
36 provided in this section, proceedings shall be had as provided by
37 local rules of the superior court.

38 SEC. 11. Section 402 of the Code of Civil Procedure is
39 repealed.

SEC. 12. Section 402 is added to the Code of Civil Procedure, to read:

402. (a) Except as otherwise provided by law:

(1) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be filed.

(2) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be heard or tried.

(3) A superior court may not dismiss a case, and the clerk may not reject a case for filing, because it is filed, or a person seeks to file it, in a court location other than the location specified by local rule. However, the court may transfer the case on its own motion to the proper court location.

(b) A superior court may transfer an action or proceeding filed in one location to another location of the superior court. This section does not affect the authority of the presiding judge to apportion the business of ~~he~~ the court as provided by the California Rules of Court.

SEC. 13. Section 402.5 of the Code of Civil Procedure is repealed.

SEC. 13.5. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 28-day period of notice shall be increased by two court days. The motion

1 shall be heard no later than 30 days before the date of trial, unless
2 the court for good cause orders otherwise. The filing of the motion
3 shall not extend the time within which a party must otherwise file
4 a responsive pleading.

5 (b) The motion shall be supported by affidavits, declarations,
6 admissions, answers to interrogatories, depositions, and matters of
7 which judicial notice shall or may be taken. The supporting papers
8 shall include a separate statement setting forth plainly and
9 concisely all material facts which the moving party contends are
10 undisputed. Each of the material facts stated shall be followed by
11 a reference to the supporting evidence. The failure to comply with
12 this requirement of a separate statement may in the court's
13 discretion constitute a sufficient ground for denial of the motion.

14 Any opposition to the motion shall be served and filed not less
15 than 14 days preceding the noticed or continued date of hearing,
16 unless the court for good cause orders otherwise. The opposition,
17 where appropriate, shall consist of affidavits, declarations,
18 admissions, answers to interrogatories, depositions, and matters of
19 which judicial notice shall or may be taken.

20 The opposition papers shall include a separate statement which
21 responds to each of the material facts contended by the moving
22 party to be undisputed, indicating whether the opposing party
23 agrees or disagrees that those facts are undisputed. The statement
24 also shall set forth plainly and concisely any other material facts
25 which the opposing party contends are disputed. Each material fact
26 contended by the opposing party to be disputed shall be followed
27 by a reference to the supporting evidence. Failure to comply with
28 this requirement of a separate statement may constitute a sufficient
29 ground, in the court's discretion, for granting the motion.

30 Any reply to the opposition shall be served and filed by the
31 moving party not less than five days preceding the noticed or
32 continued date of hearing, unless the court for good cause orders
33 otherwise.

34 Evidentiary objections not made at the hearing shall be deemed
35 waived.

36 **Sections**

37 *Except for subdivision (c) of Section 1005 relating to the method*
38 *of service of opposition and reply papers, Sections 1005 and 1013,*
39 *extending the time within which a right may be exercised or an act*
40 *may be done, do not apply to this section.*

1 Any incorporation by reference of matter in the court's file shall
2 set forth with specificity the exact matter to which reference is
3 being made and shall not incorporate the entire file.

4 (c) The motion for summary judgment shall be granted if all the
5 papers submitted show that there is no triable issue as to any
6 material fact and that the moving party is entitled to a judgment as
7 a matter of law. In determining whether the papers show that there
8 is no triable issue as to any material fact the court shall consider
9 all of the evidence set forth in the papers, except that to which
10 objections have been made and sustained by the court, and all
11 inferences reasonably deducible from the evidence, except
12 summary judgment shall not be granted by the court based on
13 inferences reasonably deducible from the evidence, if contradicted
14 by other inferences or evidence, which raise a triable issue as to any
15 material fact.

16 (d) Supporting and opposing affidavits or declarations shall be
17 made by any person on personal knowledge, shall set forth
18 admissible evidence, and shall show affirmatively that the affiant
19 is competent to testify to the matters stated in the affidavits or
20 declarations. Any objections based on the failure to comply with
21 the requirements of this subdivision shall be made at the hearing
22 or shall be deemed waived.

23 (e) If a party is otherwise entitled to a summary judgment
24 pursuant to this section, summary judgment shall not be denied on
25 grounds of credibility or for want of cross-examination of
26 witnesses furnishing affidavits or declarations in support of the
27 summary judgment, except that summary judgment may be denied
28 in the discretion of the court, where the only proof of a material fact
29 offered in support of the summary judgment is an affidavit or
30 declaration made by an individual who was the sole witness to that
31 fact; or where a material fact is an individual's state of mind, or
32 lack thereof, and that fact is sought to be established solely by the
33 individual's affirmation thereof.

34 (f) (1) A party may move for summary adjudication as to one
35 or more causes of action within an action, one or more affirmative
36 defenses, one or more claims for damages, or one or more issues
37 of duty, if that party contends that the cause of action has no merit
38 or that there is no affirmative defense thereto, or that there is no
39 merit to an affirmative defense as to any cause of action, or both,
40 or that there is no merit to a claim for damages, as specified in

1 Section 3294 of the Civil Code, or that one or more defendants
2 either owed or did not owe a duty to the plaintiff or plaintiffs. A
3 motion for summary adjudication shall be granted only if it
4 completely disposes of a cause of action, an affirmative defense,
5 a claim for damages, or an issue of duty.

6 (2) A motion for summary adjudication may be made by itself
7 or as an alternative to a motion for summary judgment and shall
8 proceed in all procedural respects as a motion for summary
9 judgment. However, a party may not move for summary judgment
10 based on issues asserted in a prior motion for summary
11 adjudication and denied by the court, unless that party establishes
12 to the satisfaction of the court, newly discovered facts or
13 circumstances or a change of law supporting the issues reasserted
14 in the summary judgment motion.

15 (g) Upon the denial of a motion for summary judgment, on the
16 ground that there is a triable issue as to one or more material facts,
17 the court shall, by written or oral order, specify one or more
18 material facts raised by the motion as to which the court has
19 determined there exists a triable controversy. This determination
20 shall specifically refer to the evidence proffered in support of and
21 in opposition to the motion which indicates that a triable
22 controversy exists. Upon the grant of a motion for summary
23 judgment, on the ground that there is no triable issue of material
24 fact, the court shall, by written or oral order, specify the reasons
25 for its determination. The order shall specifically refer to the
26 evidence proffered in support of, and if applicable in opposition to,
27 the motion which indicates that no triable issue exists. The court
28 shall also state its reasons for any other determination. The court
29 shall record its determination by court reporter or written order.

30 (h) If it appears from the affidavits submitted in opposition to
31 a motion for summary judgment or summary adjudication or both
32 that facts essential to justify opposition may exist but cannot, for
33 reasons stated, then be presented, the court shall deny the motion,
34 or order a continuance to permit affidavits to be obtained or
35 discovery to be had or may make any other order as may be just.

36 (i) If the court determines at any time that any of the affidavits
37 are presented in bad faith or solely for purposes of delay, the court
38 shall order the party presenting the affidavits to pay the other party
39 the amount of the reasonable expenses which the filing of the
40 affidavits caused the other party to incur. Sanctions shall not be

imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(l) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, nor a witness, nor the court shall comment upon the grant or denial of a motion for summary adjudication to a jury.

(n) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(o) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable

1 issue of material fact exists but, instead, shall set forth the specific
2 facts showing that a triable issue of material fact exists as to that
3 cause of action or a defense thereto.

4 (p) Nothing in this section shall be construed to extend the
5 period for trial provided by Section 1170.5.

6 (q) Subdivisions (a) and (b) shall not apply to actions brought
7 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
8 of Part 3.

9 (r) For the purposes of this section, a change in law shall not
10 include a later enacted statute without retroactive application.

11 SEC. 14. Section 575.2 of the Code of Civil Procedure is
12 amended to read:

13 575.2. (a) Local rules promulgated pursuant to Section 575.1
14 may provide that if any counsel, a party represented by counsel, or
15 a party if in pro se, fails to comply with any of the requirements
16 thereof, the court on motion of a party or on its own motion may
17 strike out all or any part of any pleading of that party, or, dismiss
18 the action or proceeding or any part thereof, or enter a judgment
19 by default against that party, or impose other penalties of a lesser
20 nature as otherwise provided by law, and may order that party or
21 his or her counsel to pay to the moving party the reasonable
22 expenses in making the motion, including reasonable attorney
23 fees. No penalty may be imposed under this section without prior
24 notice to, and an opportunity to be heard by, the party against
25 whom the penalty is sought to be imposed.

26 (b) It is the intent of the Legislature that if a failure to comply
27 with these rules is the responsibility of counsel and not of the party,
28 any penalty shall be imposed on counsel and shall not adversely
29 affect the party's cause of action or defense thereto.

30 SEC. 15. Section 631 of the Code of Civil Procedure is
31 amended to read:

32 631. (a) The right to a trial by jury as declared by Section 16
33 of Article I of the California Constitution shall be preserved to the
34 parties inviolate. In civil cases, a jury may only be waived pursuant
35 to subdivision (d).

36 (b) Each party demanding a jury trial shall deposit advance jury
37 fees with the clerk or judge. The total amount of the advance jury
38 fees may not exceed one hundred fifty dollars (\$150) for each
39 party. The deposit shall be made at least 25 calendar days before
40 the date initially set for trial, except that in unlawful detainer

1 actions the fees shall be deposited at least five days before the date
2 set for trial.

3 (c) The parties demanding a jury trial shall deposit with the
4 clerk or judge, at the beginning of the second and each succeeding
5 day's session, a sum equal to that day's fees and mileage of the jury,
6 including the fees and mileage for the trial jury panel if the trial
7 jury has not yet been selected and sworn. If more than one party
8 has demanded a jury, the respective amount to be paid daily by
9 each party demanding a jury shall be determined by stipulation of
10 the parties or by order of the court.

11 (d) A party waives trial by jury in any of the following ways:

12 (1) By failing to appear at the trial.

13 (2) By written consent filed with the clerk or judge.

14 (3) By oral consent, in open court, entered in the minutes ~~or~~
15 ~~register of actions.~~

16 (4) By failing to announce that a jury is required, at the time the
17 cause is first set for trial, if it is set upon notice or stipulation, or
18 within five days after notice of setting if it is set without notice or
19 stipulation.

20 (5) By failing to deposit with the clerk, or judge, advance jury
21 fees as provided in subdivision (b).

22 (6) By failing to deposit with the clerk or judge, at the
23 beginning of the second and each succeeding day's session, the
24 sum provided in subdivision (c).

25 (e) The court may, in its discretion upon just terms, allow a trial
26 by jury although there may have been a waiver of a trial by jury.

27 SEC. 16. Section 1005 of the Code of Civil Procedure is
28 amended to read:

29 1005. (a) Written notice shall be given, as prescribed in
30 subdivisions (b) and (c), for the following motions:

31 (1) Notice of Application and Hearing for Writ of Attachment
32 under Section 484.040.

33 (2) Notice of Application and Hearing for Claim and Delivery
34 under Section 512.030.

35 (3) Notice of Hearing for Claim of Exemption under Section
36 706.105.

37 (4) Motion to Quash Summons pursuant to subdivision (b) of
38 Section 418.10.

39 (5) Motion for Determination of Good Faith Settlement
40 pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 21 calendar days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 21-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 21-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least 10 calendar days, and all reply papers at least five calendar days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

SEC. 17. Section 2094 of the Code of Civil Procedure is amended to read:

2094. (a) An oath, affirmation, or declaration in an action or a proceeding, may be administered by obtaining an affirmative response to one of the following questions:

(1) “Do you solemnly state that the evidence you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth, so help you God?”

(2) “Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth?”

(b) In the alternative to the forms prescribed in subdivision (a), the court may administer an oath, affirmation, or declaration in an action or a proceeding in a manner that is calculated to awaken the person’s conscience and impress the person’s mind with the duty to tell the truth. The court shall satisfy itself that the person testifying understands that his or her testimony is being given under penalty of perjury.

SEC. 18. The heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8. Clergy Penitent Privileges

SEC. 19. Section 1030 of the Evidence Code is amended to read:

1030. As used in this article, a “member of the clergy” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.

1 SEC. 20. Section 1031 of the Evidence Code is amended to
2 read:

3 1031. As used in this article, “penitent” means a person who
4 has made a penitential communication to a member of the clergy.

5 SEC. 21. Section 1032 of the Evidence Code is amended to
6 read:

7 1032. As used in this article, “penitential communication”
8 means a communication made in confidence, in the presence of no
9 third person so far as the penitent is aware, to a member of the
10 clergy who, in the course of the discipline or practice of the clergy
11 member’s church, denomination, or organization, is authorized or
12 accustomed to hear those communications and, under the
13 discipline or tenets of his or her church, denomination, or
14 organization, has a duty to keep those communications secret.

15 SEC. 22. Section 1033 of the Evidence Code is amended to
16 read:

17 1033. Subject to Section 912, a penitent, whether or not a
18 party, has a privilege to refuse to disclose, and to prevent another
19 from disclosing, a penitential communication if he or she claims
20 the privilege.

21 SEC. 23. Section 1034 of the Evidence Code is amended to
22 read:

23 1034. Subject to Section 912, a member of the clergy, whether
24 or not a party, has a privilege to refuse to disclose a penitential
25 communication if he or she claims the privilege.

26 SEC. 24. Section 818.9 of the Government Code is amended
27 to read:

28 818.9. A court or county, its employees, independent
29 contractors, and volunteers shall not be liable because of any
30 advice provided to small claims court litigants or potential litigants
31 as a public service on behalf of the court or county pursuant to the
32 Small Claims Act (Chapter 5.5 (commencing with Section
33 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

